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13  
14 IN THE UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA

16  
17 UNITED STATES OF AMERICA,  
18 Plaintiff,  
19 v.  
20 ANDREW SATARIANO,  
21 Defendant.

22 CASE NO. 1:21-CR-00295-JLT SKO  
23 STIPULATION VACATE STATUS CONFERENCE  
24 AND SET A TRIAL DATE, AND REGARDING  
25 EXCLUDABLE TIME PERIODS UNDER SPEEDY  
TRIAL ACT; ORDER  
DATE: February 15, 2023  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

26  
27 This case is set for a status conference on February 15, 2023 at 1:00 p.m. in front of the  
28 Honorable Sheila K. Oberto, U.S. Magistrate Court Judge. The parties stipulate and request to vacate  
the status conference, and set a trial for November 14, 2023 at 8:30 a.m. Counsel needs additional time  
to review discovery and conduct additional investigation.

29  
30 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the  
31 courthouse in June 2021, recognized the continued public health emergency, continued to authorize  
32 video or teleconference court appearances in various cases, and noted the court's continued ability under  
33 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and  
34 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,  
35 which "authorized the use of videoconference and teleconference technology in certain criminal  
36 proceedings under the in the Eastern District of California." This and previous General Orders highlight  
37 and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)

1 and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the  
 2 defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the  
 3 defendant does not consent and there is a “showing that extraordinary circumstances exist and justice  
 4 requires the delay.” Here, the defendant consents and there is good cause.

5       Although the General Orders address the district-wide health concern, the Supreme Court has  
 6 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 7 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 8 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 9 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 10 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 11 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 12 or in writing”).

13       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 14 and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-  
 15 of-justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 16 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 17 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 18 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 19 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 20 and the defendant in a speedy trial.” *Id.*

21       The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 22 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 23 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 24 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 25 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 26 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 27 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 28 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a

1 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

2 In light of the societal context created by the foregoing, this Court should consider the following  
3 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
4 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date  
5 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
6 pretrial continuance must be “specifically limited in time”).

7 **STIPULATION**

8 Plaintiff United States of America, by and through its counsel of record, and defendants, by and  
9 through defendants’ counsel of record, hereby stipulate as follows:

10 1. Defense counsel needs additional time to review discovery and conduct additional  
11 investigation to prepare should this case proceed to trial instead of resolve by a plea. Since the last  
12 continuance, the parties have engaged in further plea negotiations and discussions regarding resolution.  
13 The parties have had additional discussions regarding sentencing guidelines calculations. The discovery  
14 is voluminous, and the parties have worked through some issues related to discovery matters. Defense  
15 needs additional time to conduct any additional investigation warranted.

16 2. By this stipulation, defendants now move to vacate the February 15, 2023 status and set a  
17 trial for November 14, 2023, and to exclude time from February 15, 2023 to November 14, 2023 under  
18 Local Code T4.

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case  
21 includes investigative reports, videos, photos, and related documents in electronic form. All of  
22 this discovery has been either produced directly to counsel and/or made available for inspection  
23 and copying.

24 b) The parties have engaged in further plea negotiations and discussions regarding  
25 resolution,. Defense needs additional time to review the revised plea agreement and conduct any  
26 additional investigation warranted as a result of that.

27  
28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
Cal. March 18, 2020).

c) The government does not object to vacating the status conference and setting the case for trial on November 14, 2023.

d) In addition to the public health concerns cited by the General Orders and declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because:

- Defendants ability to prepare for trial or a plea has been inhibited by the public health emergency;
- Defendants needs additional time to review discovery, conduct additional investigation, and work towards a potential plea agreement; and

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of February 15, 2023 to November 14, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

**[Remainder of page intentionally left blank.]**

1       4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
3 must commence.

4       IT IS SO STIPULATED.

5       Dated: February 10, 2023

6       PHILLIP A. TALBERT  
United States Attorney

7       \_\_\_\_\_  
8       /s/ KIMBERLY A. SANCHEZ  
9       KIMBERLY A. SANCHEZ  
\_\_\_\_\_  
10      Assistant United States Attorney

11      Dated: February 10, 2023

12      \_\_\_\_\_  
13      /s/ Steven L. Crawford  
14      \_\_\_\_\_  
15      Attorney for Defendant  
16      ANDREW SATARIANO

17       **ORDER**

18       IT IS SO ORDERED.

19      DATED: 2/10/2023

20      \_\_\_\_\_  
21      *Sheila K. Oberto*  
22      \_\_\_\_\_  
23      THE HONORABLE SHEILA K. OBERTO  
24      UNITED STATES MAGISTRATE COURT JUDGE